

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

MAY 15 2003

Michael N. Milby, Clerk of Court

In Re Enron Corporation	§	
Securities, Derivative &	§	MDL-1446
"ERISA Litigation	§	
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THIS DOCUMENT RELATES TO:	§	
	§	
All Cases	§	
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MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	
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THE REGENTS OF THE UNIVERSITY	§	
OF CALIFORNIA, et al.,	§	
Individually and on Behalf of	§	
All Others Similarly Situated,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
KENNETH L. LAY, ET AL.,	§	
	§	
Defendants.	§	

ORDER

Pending before the Court are Enron Insider Defendants Joseph W. Sutton's ("Sutton's") motion to reconsider his motion to dismiss (instrument #1346) and Stanley C. Horton's ("Horton's") motion for reconsideration (#1361), both regarding the Court's denial¹ of their motions to dismiss.

With respect to Sutton's motion to reconsider, the Court has addressed most of his challenges in its denial of Certain

¹ See instrument #1299, entered 3/25/03.

#1385

Officer Defendants' (Steven J. Kean, Mark E. Koenig, Lawrence Greg Whalley, Mark A. Frevert, and Cindy K. Olson's) motion for reconsideration and refers Sutton to that order (#1345). The Court reiterates that it has considered the totality of the circumstances in reaching its decisions about each Defendant's motion to dismiss.

Sutton contests some of Lead Plaintiff's factual allegations as untrue, but such arguments may not be considered in a Rule 12(b)(6) motion to dismiss. The Court notes that, according to the complaint, Sutton was involved in the day-to-day business operations at Enron and sat on the Management Committee for three consecutive years, from 1997-1999, and therefore the Court's summary of alleged factors that made such a role highly significant also apply to him. Moreover, contrary to Sutton's arguments, the Court finds there are key distinctions in the amended consolidated complaint's allegations regarding Sutton's role and that of Rebecca Mark-Jusbasche, who initially also worked at Enron International, but left before the Class Period began, to work as CEO at Azurix, a subsidiary, and was not involved with Enron's daily business activities during the Class Period. Mark-Jusbasche served on the Enron Board of Directors for only one year and sat on no committees. While the complaint asserts that Enron paid too much money, failed to perform due diligence before purchasing Wessex Water and establishing Azurix, and played games to maintain its financing, the complaint does not charge the failing water business nor Mark Jusbasche in her specific role at

Azurix with deception or fraud. Therefore the Court denies Sutton's motion to reconsider.

According to the complaint, Horton was intimately involved in Enron's daily business and thus, at the very minimum, exposed to the prevalent workplace chatter about Enron's fraudulent practices. He also purported served on the Management Committee for four consecutive years, from 1997-2000. Thus the Court's analysis of the import of that membership role applies to him. Moreover, such involvement and exposure to allegedly repetitive deceptive practices, combined with Horton's substantial bonuses while serving on the Management Committee and his stock sales, which may constitute primary violations of § 10(b) for breach of the fiduciary duty to disclose, lead the Court to find that Lead Plaintiff has stated a claim against him for violations of federal securities law. While Horton protests that his alleged role was similar to those of Joseph M. Hirko and James V. Derrick, Jr., whose motions to dismiss were granted, the Court disagrees. The complaint reflects that Hirko remained in Oregon, distanced from the daily operations of Enron in Houston, never received any bonuses, and left EBS before the fraud alleged in the complaint took place, and sold his Enron stock just prior to leaving the company in the spring of 2000.² The complaint does not claim that James V. Derrick, Jr., an Enron attorney, was involved in Enron's

² Ex. C to Lead Plaintiff's Appendix in support of its complaint (#442) reflects that Horton had numerous sales of his Enron stock, with substantial amounts sold at peak prices during 2000-01.

day to day business. The complaint focuses on Derrick's role in recommending that Vinson & Elkins LLP perform the internal investigation following Watkins' warning memorandum to Kenneth Lay in August 2001; the Court determined that this investigation, not intended to be made public and not disclosed until after the Class Period, did not constitute a § 10(b) violation. There were no other allegations to tie Derrick to the alleged fraud.³

For these reasons, the Court

ORDERS that Sutton's and Horton's motions for reconsideration (#1346 and 1361, respectively) are DENIED.

SIGNED at Houston, Texas, this 14th day of May, 2003.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

³ The Court also found that the Powers Report, on which Lead Plaintiff relied to allege that Derrick participated in Vinson & Elkins' purportedly deceptive disclosures about related-party transactions and advised the law firm regarding disclosures in Enron's financial statements, did not support Lead Plaintiff's allegations, and in fact, controverted them. Moreover the Powers Report suggested that Derrick relied on Vinson & Elkins' and Arthur Andersen's expertise in determining the adequacy of proposed disclosures.